

FILED
JAN 22 2015
CRAIG WILLIAMS
CIRCUIT CLERK BARRY COUNTY, MO

IN THE CIRCUIT COURT OF BARRY COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
Attorney General Chris Koster and)
Missouri Department of)
Natural Resources,)

Plaintiff,)

v.)

TYSON FOODS, INC.,)

Defendant.)

RECEIVED
Office of the Presiding Judge

JAN 20 2015

39th Judicial Circuit
Missouri

Case No. 14BR-CC00071

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendant Tyson Foods, Inc., by and through counsel, consent to the entry of this Consent Judgment.

The Court has read Plaintiff's Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges that Defendant violated the Missouri Clean Water Law and Hazardous Waste Management Law. The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, without concessions by the State as to Defendant's liability or without the admission of any allegation of fact or law by any person or entity, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. The Court is

satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition and that the parties want to terminate this controversy and consent to the entry of this judgment without trial. The Court retains jurisdiction over the matter in order to enforce each and every term of this Consent Judgment.

The parties hereto, having consented to the entry of this Consent Judgment, now therefore, before the taking of any testimony and upon the pleadings, it is hereby agreed that:

I. Objectives of the Parties

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

II. Definitions

2. Terms used herein shall have the same meaning as provided in Chapters 260 and 644 RSMO and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Aurora Facility" means the Tyson Foods, Inc./Tyson Poultry, Inc. facility located at 100 Wolfe Road, Aurora, Missouri.

b. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

- c. "Defendant" means Tyson Foods, Inc.
- d. "Department" means the Missouri Department of Natural Resources.
- e. "Monett Facility" means the Tyson Foods, Inc./Tyson Poultry, Inc. facility located at 800 County Road, Monett, Barry County, Missouri.
- f. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.
- g. "Supplemental Environmental Projects" shall have the meaning provided in Section VII.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to §§ 260.425.1 and 644.076.1 (2005) RSMo. Venue is proper in this court pursuant to §§ 260.425.1 and 644.076.1 (2005) RSMo because the Defendant's conduct giving rise to this action took place in Barry County.

IV. Parties Bound

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the

parties to this action or their agents, servants, employees, successors, and assigns. Defendant shall provide a copy of this order to all persons or entities retained to perform work required by this order.

V. Satisfaction and Reservation of Rights

5. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all Supplemental Environmental Projects, and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendant, including its officers, directors, employees, parent companies, subsidiaries, and affiliates, is relieved of liability for (a) the violations alleged in the petition and (b) violations that could have been alleged based on Defendant's actions or failures to act described in the general allegations in the petition.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or the Missouri Hazardous Waste Management Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Except as stated in Paragraph 5(b), nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law and the Missouri Hazardous Waste Management Law or regulations promulgated under its authority.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant' facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

VI. Injunctive Relief

7. Defendant has taken action to address the potential for a future occurrence similar to the one at issue in the petition. Among other steps, Defendant has undertaken the following:

a. It codified and issued an "Alimet Alert" that sets forth current requirements and new practices to prevent, monitor and respond to Alimet releases at its corporate feed mills;

b. It convened a summit meeting of managers at all of its Missouri facilities to conduct a comprehensive review of environmental issues at those facilities, including but not limited to wastewater treatment and feed mill issues;

c. It provided additional hazardous waste and water discharge training to personnel at the Monett and Aurora Facilities;

d. It promulgated a new company-wide environmental operating procedure that focuses on feed mill chemical storage practices entitled "Feed Mill Chemical and Ingredient Spill Prevention and Response Planning Standard;" and

e. It promulgated an amendment to its the "Wastewater Discharge Standard" to specifically address the issue of receipt of shipments of wastewater from offsite locations.

8. Defendant is prohibited from violating any local, state or federal pretreatment regulations or causing "pass through" or "interference" as defined in 40 CFR 403.3 at the wastewater treatment facility owned by and serving the City of Monett as a result of the introduction of any material into the Monett Facility not authorized by its pretreatment permit.

9. Defendant shall conduct hazardous waste determinations as required by 10 CSR 25-5.252(1) and 40 CFR 262.11 for all solid wastes generated at the Aurora Facility and the Monett Facility.

10. Defendant shall prepare a hazardous waste manifest before transporting or offering for transportation any hazardous waste in Missouri as required by 10 CSR 25-5.252(1) and 40 CFR 262.20.

11. Defendant shall use an authorized treatment, storage and disposal facility for disposal of hazardous waste in Missouri as required by Section 260.380.1(7) RSMo.

VII. Supplemental Environmental Projects

12. Defendant shall implement a Supplemental Environmental Project ("SEP"), in accordance with Appendix A of this Consent Judgment.

13. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Judgment. Defendant may use contractors or consultants in planning and implementing the SEP.

14. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the State in connection with its approval of the SEP is complete and accurate and

that Defendant in good faith estimates that the cost to implement the SEP is \$220,000;

b. That, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and are not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Judgment;

d. That Defendant has not received and will not receive credit for the SEP in any other enforcement action;

e. That Defendants will not receive any reimbursement for any portion of the SEP from any other person.

15. SEP Completion Report. Within 30 days after the date set for completion of the SEP, Defendant shall submit a SEP Completion Report to Jack McManus, Chief Counsel, Agriculture and Environment Division, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. A description of any problems encountered in completing the SEP and the solutions thereto;

c. An itemized list of all eligible SEP costs expended;

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Judgment; and

16. Within 30 days after receiving the SEP Completion Report, the State shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Judgment, stipulated penalties may be assessed under Section X.

VIII. Information Collection and Retention

17. The State, through its authorized representatives, shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Judgment;

b. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendant's compliance with this Consent Judgment.

18. Upon request, Defendant shall provide the State, through its authorized representatives, splits of any samples taken by Defendant.

19. Until two years after the termination of this Consent Judgment, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under Sections VII and IX of this Consent Judgment. Provided, however, that this requirement shall not apply to communications with counsel or attorney work product related to Defendant's performance of its obligations under Sections VII and IX of this Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the State, Defendant shall provide copies of any documents,

records, or other information required to be maintained under this Paragraph.

20. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the State, Defendant shall deliver any such documents, records, or other information to the State.

21. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

IX. Civil Penalty

22. Defendant consents to the entry of judgment in favor of the State of Missouri for a civil penalty of \$110,000.00. Defendant hereby authorizes entry of this judgment against them and in favor of the State of Missouri for this sum.

23. Defendant agrees to pay the \$110,000.00 penalty by check made payable to the "*State of Missouri (Barry County)*" within thirty (30) days of

the entry of this Consent Judgment by mailing same to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

X. Stipulated Penalties

24. In the event that Defendant fails to comply with the requirements set forth in Paragraph 8 of this Consent Judgment, Defendant shall be liable for stipulated penalties \$5,000 per day.

25. In the event that Defendant fails to comply with the requirements set forth in Paragraphs 9, 10 or 11 of this Consent Judgment or a schedule of completion contained in Appendix A. Defendant shall be liable for stipulated penalties in accordance with the following schedule:

- a. \$200.00 per day for each day of each violation up to thirty days.
- b. \$400.00 per day for each day of each violation, from thirty-one days to sixty days.
- c. \$600.00 per day for each day of each violation, beyond sixty days.

26. Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendant shall pay stipulated penalties by check made payable to the "*State of Missouri (Barry County)*" and mailed, along with a copy of the State's stipulated penalty

demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the consent judgment and Missouri law.

27. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations, but if so, the amount of statutory penalties, if any, shall be offset by the amount of stipulated penalties paid, if any.

XI. Cost Recovery and Natural Resource Damages

28. Reimbursement of Department of Natural Resources' Costs and Expenses. Within thirty (30) days of Court approval of this Consent Judgment, Defendant shall reimburse the Department for its investigative and response costs and expenses incurred as a result of the events described in the Petition, in the amount of \$11,075.17. Payment shall be made by check made payable to the "*State of Missouri*" and delivered to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

29. Reimbursement of Department of Conservation's Costs and Expenses. Within thirty (30) days of Court approval of this Consent

Judgment, Defendant shall reimburse the Department of Conservation for its investigative and response costs and expenses incurred as a result of the events described in the Petition, in the amount of \$36,026.05. Payment shall be made by check made payable to the "*State of Missouri*" and delivered to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

30. Natural Resource Damages. Within thirty (30) days of Court approval of this Consent Judgment, Defendant agrees to pay Natural Resource Damages to the State in the amount of \$162,898.78 for the damages to surface water, aquatic life and other natural resources of the State resulting from the events described in the Petition. Of this amount, \$130,988.26 shall be paid in a check made payable to "*State of Missouri*" with memo portion of the check, or other accompanying documentation, indicating "10% Fund 0587; 90% Fund 0609." The remaining \$31,910.52 shall be made by check made payable to the "*State of Missouri (Natural Resource Damages Subaccount No. 0555)*." Both checks should be delivered to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

XII. Modification

31. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among

the parties, their successors and assigns and with the approval of the Court.
All modifications shall be in writing and filed with the Court.

XIII. Costs

32. Defendant shall pay all court costs in this action.

XIV. Termination

33. Defendant may move for termination of this Consent Judgment after the Monett and Aurora Facilities have maintained compliance with this Consent Judgment, the Missouri Clean Water Law, the Missouri Hazardous Waste Management Law and implementing regulations for a period of two years. The State reserves the right to oppose the termination of the Consent Judgment on any grounds. The consent judgment shall terminate unless the State objects within thirty (30) days of service of the motion. If the State files an objection, the motion and objection shall be heard by the court.

The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

TYSON FOODS, INC.

By: Charlie E. Solomon
Charlie E. Solomon
Senior Vice President, Small Bird/Value Added
Tyson Foods, Inc.

Date: 1/13/05

By: Kevin Igli

Kevin Igli
Senior Vice President, Chief Environmental, Health, and Safety Officer
Tyson Foods, Inc.

Date: January 13, 2015

By: Robert J. Brundage

Robert J. Brundage
Newman, Comley & Ruth P.C.
Attorney for Defendant Tyson Foods, Inc.

Date: January 14, 2015

MISSOURI ATTORNEY GENERAL'S OFFICE

By: John K. McManus

John K. McManus
Chief Counsel

Date: 1/14/15

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Leanne Tippet Mosby

Leanne Tippet Mosby, Director
Division of Environmental Quality

Date: 1/14/15



SO ORDERED.

Jack A. L. Goodman
Circuit Judge

Date: Jan. 22, 2015

Appendix A

Supplemental Environmental Project

1. In accordance with Section VII of the Consent Judgment, Tyson Foods, Inc. (“Tyson”) will perform a Supplemental Environmental Project to secure significant environmental benefits in Clear Creek. Tyson will sign an agreement with the Lawrence County Commission to fund the replacement of the Farm Road 1050 low water crossing over Clear Creek in Lawrence County, Missouri.

Removal of the present low water bridge on Clear Creek will serve a variety of benefits to the aquatic community. The existing bridge span acts as a barrier to fish movement and mussel dispersal since fish are not able to move readily upstream and downstream through the culverts in the bridge. Low water bridges that block the channel act as a dam that only allows fish movement in very high flows. Very high flow events that that overtop the bridge are infrequent and brief. The barrier to fish movement prevents spawning and dispersal of keystone species such as game fish and prey. Replacement of the existing bridge will enable the passage of fish upstream to reproduce and disperse. This includes minnows, darters and game fish in the *Centrarchidae*, sunfish family such as smallmouth bass and largemouth bass. Once this bridge is replaced with a span bridge that has an open channel design, fish will be able to move freely upstream and downstream, which will increase the diversity and the population of the aquatic community. In addition to increasing the fish community, dispersal of these fish may also enable the native mussel community to expand. Some of these fish act as hosts to *Glochidia*, larval mussels that attach to the gills of fish as they swim upstream. Once upstream the *Glochidia* drop off and grow to adulthood, thus further increasing the diversity of the aquatic community.

Attached to this appendix is Exhibit 1 is the Bridge Agreement between Lawrence County Commission and Tyson Foods, Inc. (Agreement”). The Agreement with the Lawrence County Commission to replace the Farm Road 1050 low water crossing over Clear Creek requires the bridge to be completed on or before November 30, 2015 or 330 days after effective date of the Consent Judgment, whichever is later. Tyson will provide funding of up to \$210,000 to reimburse the Lawrence County Commission for all work necessary to design, procure, and replace the crossing with a clear span bridge. Tyson has no responsibility under the Agreement besides funding the work. Tyson is thus not responsible for ensuring that Lawrence County completes the project in accordance with the agreed schedule. In the event that Lawrence County defaults on the Agreement, the remaining funds will be added to the donation to the James River Basin Partnership as provided below. The procedures for payment to the Lawrence County Commission are set forth in the Agreement.

2. In addition to the bridge replacement SEP, by no later than one year from the effective date of the consent judgment, Tyson will make a donation to the James River Basin Partnership, a not-for-profit organization that performs environmentally beneficial watershed projects in Southwest Missouri, as follows. In the event the Lawrence County Commission defaults on the agreement or the final cost of replacing the bridge is less than \$210,000, the difference between the actual final cost and \$210,000, plus \$10,000, will be contributed to the James River Basin Partnership.

In the event the final cost is \$210,000, \$10,000 will be contributed to the James River Basin Partnership.

3. Schedule of Completion:

- A. Pursuant to the Agreement, Tyson will promptly reimburse Lawrence County for all appropriate costs of designing, procuring, and replacing the existing bridge.
- B. By no later than one year from the effective date of the Consent Judgment, Tyson will make a contribution to the James River Basin Partnership as specified herein.

Exhibit 1
to
Appendix A

BRIDGE AGREEMENT BETWEEN
LAWRENCE COUNTY COMMISSION
AND TYSON FOODS, INC.

THIS AGREEMENT is made and entered into this 24th day of December, 2014, by and between the LAWRENCE COUNTY COMMISSION (the "County") and TYSON FOODS, INC. ("Tyson").

WITNESSETH:

WHEREAS, the County maintains a low water stream crossing on Lawrence County Farm Road 1050 over Clear Creek (the "crossing"), as more fully described on attached Exhibit A, and

WHEREAS, Tyson wishes to fund a Supplemental Environmental Project in the Clear Creek watershed that will improve and enhance the aquatic resources of Clear Creek by facilitating fish passage and sediment transport within Clear Creek, and

WHEREAS, the County wishes to cooperate with Tyson to replace this low water crossing to improve and allow an all weather crossing over Clear Creek while facilitating fish passage and sediment transport, and

WHEREAS, Tyson wishes to provide to the County financial assistance necessary to fund replacement of the low water crossing with a clear span bridge that will facilitate fish passage and sediment transport in Clear Creek (the "bridge").

NOW THEREFORE, in consideration of the mutual performance of all covenants,

THE COUNTY AGREES:

1. To obtain structural design plans from a qualified professional engineer for designing and constructing a bridge to replace the existing crossing and to facilitate fish passage and sediment transport while still allowing for the safe passage of vehicular traffic.
2. To provide labor, materials, and supervision for construction and development for the bridge as specified in attached Exhibit B.
3. To release, indemnify and hold harmless Tyson and any of its officers, directors, employees, subsidiaries, and affiliates against any claim arising out of or in connection with the construction, modification, maintenance, or use of the bridge as designed or installed.
4. To incorporate fish passage and sediment transport considerations into subsequent design and construction whenever the crossing must be repaired or replaced.

TYSON AGREES:

5. To provide financial assistance as specified in Exhibit B. The parties agree that Tyson shall have no obligation whatsoever with respect to the design, construction, and use of the bridge other than as specified in Exhibit B.

PROJECT PROVISIONS: The following specific project provisions are agreed to by both parties and shall remain in effect for the duration of this Agreement unless otherwise amended in writing:

6. This Agreement is for the purpose of improving and facilitating fish passage and sediment transport, as it relates to the crossing.

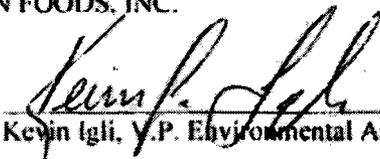
7. This Agreement shall become effective upon execution by both parties and upon the entry of the Consent Judgment in State of Missouri, et al. v. Tyson Foods, Inc. Case No. 14BRCC00071, by the Circuit Court of Barry County, Missouri. It shall expire upon completion of the bridge replacement and final payment by Tyson as specified in Exhibit B. The owner of the crossing is and shall remain the County.

8. In the event of breach or default of this Agreement by the County, or should this Agreement be terminated by the County for other than breach or default by Tyson, the County shall reimburse Tyson for the costs of improvements to the bridge funded by Tyson. In the event of breach or default of this Agreement by Tyson, all improvements installed to the crossing by the Department shall nevertheless remain the property of the County at no cost, and Tyson will remain responsible for financial assistance to the full extent specified in Exhibit B.

9. This agreement may be amended as desired by the mutual written agreement of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TYSON FOODS, INC.

BY 
Kevin Igli, V.P. Environmental Affairs

Date: 12/24/2014

LAWRENCE COUNTY COMMISSION

BY 
Presiding Commissioner

Date: 12/24/14

ATTEST  Date: 12-24-14
County Clerk

Exhibit A

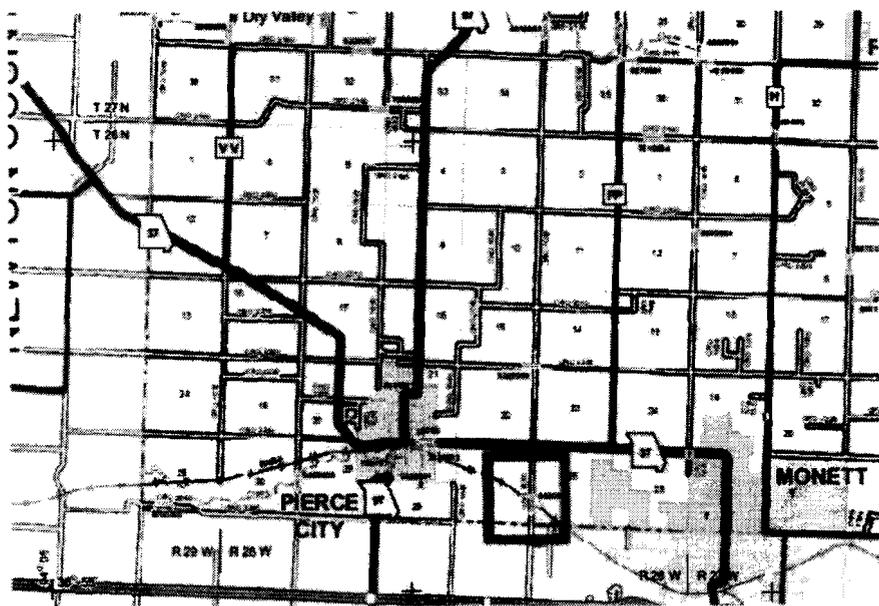
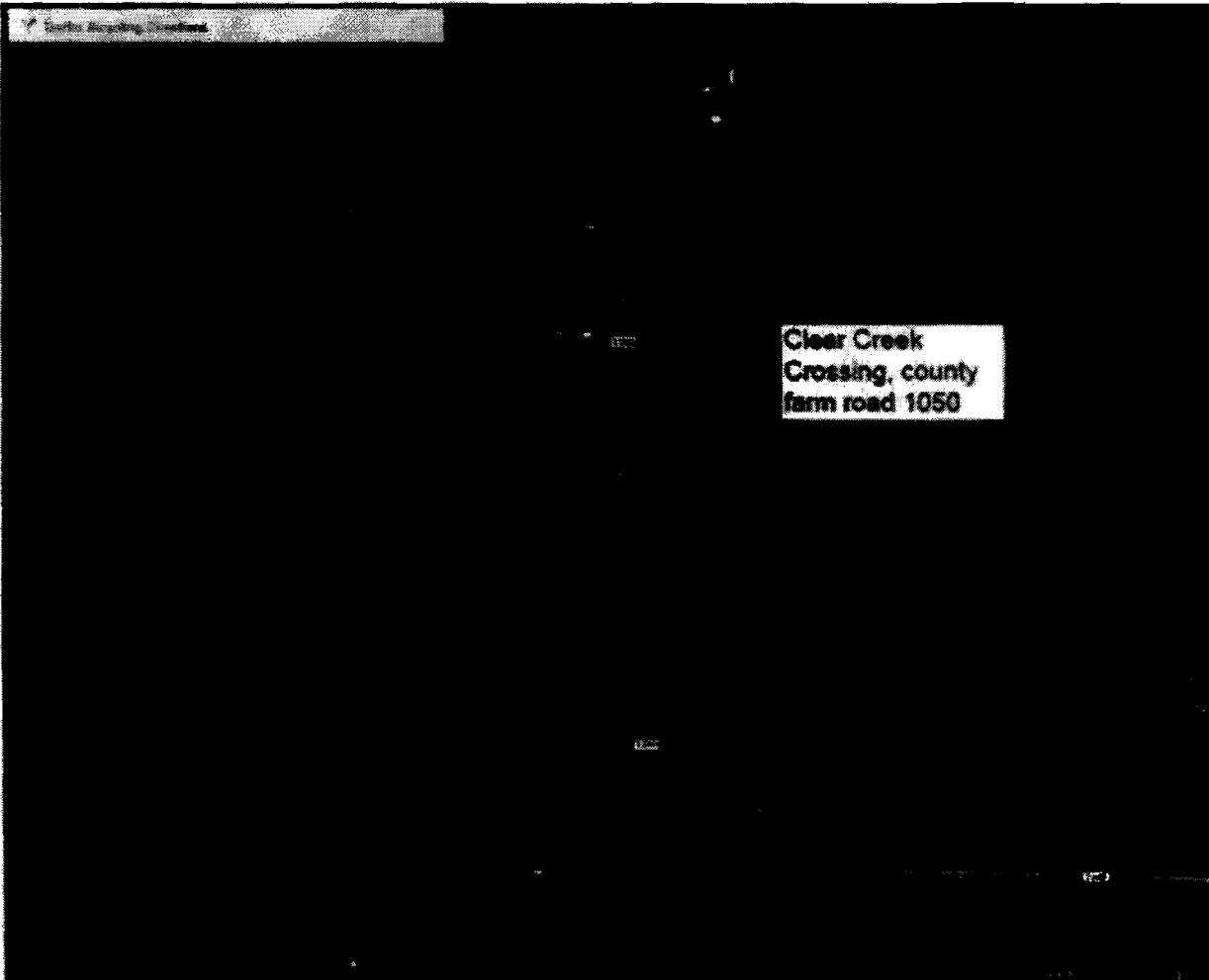


EXHIBIT B

Tyson agrees to provide funding of no more than \$210,000 to reimburse the County for engineering and construction costs and associated removal and replacement of the crossing with a bridge that allows for fish passage and sediment transport. The County shall be responsible for any sums that exceed \$210,000.

The County agrees to the following conditions and to provide, labor, materials, and supervision for construction and development of the following:

1. To construct a professionally designed and engineered concrete, clear span low water bridge (approximately 45 feet long x 20 feet wide) on Lawrence County Farm Road 1050 over Clear Creek.
2. A Missouri Department of Conservation' representative must approve the design plans as to suitability for fish and sediment transport only prior to constructing the crossing. Failure to obtain Department approval of design plans as to suitability for fish and sediment transport only will be considered a breach of this agreement by the County.
3. A Department of Conservation' representative must verify that the bridge as to suitability for fish and sediment transport only, upon completion. Failure to obtain this approval of the completed project will be considered a breach of this agreement by the County.
4. The County will provide Tyson a copy of all applicable invoices for materials, supplies, and contract work utilized in the construction of the bridge along with a copy of payment vouchers reflecting payment by the County for said materials, supplies and contract work. After Tyson receives a copy of the invoices and payment vouchers from the County, Tyson shall reimburse the County for the expenditures, not to exceed a total of \$210,000.
5. The County will comply with all applicable federal, state, and local laws, rules, and regulations governing the construction of the crossing specified herein, including but not limited to employment practices and special permits.
6. Construction shall begin as soon as practicable after the later of March 1, 2015 or 30 days after entry of the Consent Judgment.
7. Construction shall be completed and all related invoices and payment vouchers shall be submitted by the County to Tyson by the later of November 30, 2015 or 330 days after entry of the Consent Judgment.

REIMBURSEMENT AND AUDITING REQUIREMENTS

The County will request from Tyson reimbursement payments in the manner specified below. The following audit requirements shall be applied by the county to insure full participation:

8. All costs incurred by the county for both contract work and work performed by local county personnel for which reimbursement is sought must be supported by original source documents or documentation which provides adequate assurance that the quantities of completed work were determined accurately and on a uniform basis. Whenever the actual cost method of payment is used, reimbursement requests for costs incurred should be substantiated as follows:

a. Labor costs are supported by the documentation described below in item 10.

b. Material and equipment costs are supported by submitting a paid receipt from the vendor.

c. Machinery rental costs are supported by submitting a paid receipt from the rental vendor.

d. Rental fees for county-owned equipment and machinery are supported with hourly documentation. The rental rates and operating costs shall be based on either the Dataquest (Dunn & Bradstreet) Rental Rate Blue Book.

9. Project-specific county in-house costs are allowable to the extent that they are supported by original source documentation. Daily time records supported by a project number must be kept for audit. They shall include the daily breakdown of the employee's time. The hourly rates must be the rate the employee actually received, plus actual labor additives calculated on a percent of labor basis (Social Security, Workmen's Compensation, insurance, etc.). The cost of vehicle and other equipment usage may be claimed on an hourly or mileage basis to the extent that the cost can be supported.

10. Incidental costs, arbitrary or otherwise unsupported costs or items not necessary to complete the project will not be reimbursed.

11. Additional construction costs due to error on the part of the contractor are not eligible for reimbursement. Also, additional inspection costs incurred as a result of contractor error are normally assessed against the contractor and are not eligible for reimbursement. The term contractor shall also include subcontractors, fabricators, and suppliers working on the project.

12. Additional engineering and/or resulting construction costs due to design errors and omissions are not eligible for reimbursement. Participation in added project costs resulting from re-design or plan changes can only be considered in cases where it can definitely be established that the changes were the result of unforeseen site conditions or other causes that would not reasonably be under the control of the county or their engineer.

PROGRESS INVOICES

13. The county may submit up to three invoices for reimbursement of costs incurred as follows: one invoice after the preliminary plans have been submitted and approved by MDNR, a second invoice after the construction has initiated and one final invoice after all work has been

completed. The county may use either of the following alternate methods of seeking progress payments:

a. The county pays the contractor/consultant for work performed and then submits a progress invoice for reimbursement; or

b. The county prepares the pay estimate for work performed and monies due the contractor/consultant. This estimate is placed in line for payment under normal payment procedures, and at the same time, the county submits a progress invoice to Tyson. If the county adopts this method, it must develop cash management procedures to ensure payment is made to the contractor/consultant within two (2) business days of receipt of funds from Tyson.

14. Whichever of the above methods is used, Tyson will expedite reimbursement back to the county as quickly as possible. It is estimated that the average length of time from invoice submittal to receipt of reimbursement will be about 20 working days. The county cannot withhold or make payment to a contractor/consultant contingent upon "reimbursement" of progress invoices. The invoice shall be based on the total incurred costs, provided that no nonparticipating costs are involved.

15. If nonparticipating costs are involved, it will be necessary for the county to include on each invoice an itemization of nonparticipating charges incurred to date and to deduct them from the total incurred cost of the project. If nonparticipating costs are involved in the project but not yet paid, a statement by the county to that effect will suffice.

16. Two copies of the progress invoice shall be submitted by the county. Invoices shall be accompanied by one copy of the supporting details indicating the units for which payment is allowed, the unit price for each item and total price for each item.

FINAL INVOICE

17. Two copies of the final invoice should be submitted after all work has been completed and accepted. The final invoice must be marked Final Invoice and be accompanied by a detailed itemization of total project costs. The final invoice should be submitted in the same manner as progress payment invoices.

EXHIBIT C

STANDARD BRIDGE MAINTENANCE REQUIREMENTS

The County agrees to provide maintenance sufficient to keep the new bridge in a safe and operational condition. In accomplishment of this, the County agrees:

1. To remove gravel and flood debris from the deck of the crossing as needed.
 2. To remove snags and obstructions from the stream channel, in the immediate vicinity of the crossing, if now under the crossing is obstructed.
 3. To examine the crossing immediately following high flow events for scour or undercutting that may impact the structural integrity of the crossing.
 4. To provide maintenance as needed to the crossing and roadway approaches.
 5. To obtain any permits necessary to conduct these maintenance requirements.
- Failure to maintain the crossing as specified will be considered a breach of this agreement by the County.